

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KARLA ANN YOUNG
Claimant

VS.

TRINITY NURSING & REHAB CENTER
Respondent

AND

KS. HEALTHCARE ASSOC. INS. TRUST
Insurance Carrier

Docket No. **1,033,623**

ORDER

Respondent and its insurance carrier request review of the August 8, 2007 preliminary hearing Order entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

After the preliminary hearing, the Administrative Law Judge (ALJ) entered an Order for respondent to pay for an MRI of claimant's right knee in order to determine the course of further medical treatment. The ALJ made no factual findings, nor any analysis of the issues. K.S.A. 44-534a(2) provides that upon a preliminary finding that a claim is compensable an ALJ may make a preliminary award of medical compensation. Consequently, it is implicit in the ALJ's Order that timely written claim was determined in claimant's favor as the ALJ found claimant was entitled to medical treatment.

The respondent requests review of whether claimant filed timely written claim. Respondent argues claimant last saw the treating physician on May 13, 2006, and that her application for hearing was not filed within 200 days therefore claimant's claim should be denied. Claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

At the preliminary hearing on August 6, 2007, respondent denied claimant provided timely written claim.

Karla Young was employed with respondent as a certified nurse's aide (CNA). Her job duties included patient care, assisting patients with daily activities, meals, and transportation as well as administering medications. On May 13, 2006, claimant was carrying a tray of food when she stepped in water, slipped and fell forward on both knees hitting the concrete floor. Claimant needed assistance in standing up and experienced immediate pain. She notified her supervisor and also applied ice to her knees.

The nursing supervisor gave claimant an incident report to complete. Claimant's right knee began to swell and respondent referred her to Shawnee Mission Urgent Care. X-rays were taken and no fractures were revealed. Claimant was diagnosed with contusions to her bilateral knees prescribed medication for pain and given restrictions of no prolonged standing or walking. Respondent referred claimant to Corporate Care where she received three weeks of physical therapy. Claimant testified she is currently having pain in both knees plus swelling. She is no longer working for the respondent but is still working in the nursing field.

On cross-examination, claimant testified she had not received any medical treatment from May through November 2006. On February 13, 2007, claimant sought treatment with Kansas City Free Health Clinic due to problems with her knees. Claimant was diagnosed with osteoarthritis and given Ibuprofen for pain. Her pain increased so she sought medical treatment at KU Medical Center's emergency room. She was advised that her tendon was inflamed and that she needed an MRI. Claimant testified she did not have any knee problems prior to her injury nor has she sustained a new injury. Claimant filed an application for hearing on March 14, 2007.

As stated, whether claimant made timely written claim, is the sole issue for review by the Board.

K.S.A. 44-520a(a) provides for written claim to be served within 200 days of the accident date or the date of the last payment of compensation. Providing medical treatment is payment of compensation.

One of the purposes of the written claim requirement is to enable the employer to know about the injury in time to investigate it.¹ The same purpose or function has been ascribed to the requirement for notice found in K.S.A. 44-520.² The written claim is, however, one step beyond notice in that an intent to ask the employer to pay compensation

¹ *Craig v. Electrolux Corporation*, 212 Kan. 75, 82, 510 P.2d 138 (1973).

² *Pike v. Gas Service Co.*, 223 Kan. 408, 573 P.2d 1055 (1978).

is required.³ Another purpose of the written claim statute, therefore, is to require the employee to make a positive claim in writing, that he or she desires to recover under the Workers Compensation Act.⁴ The Kansas Supreme Court has noted that a written claim-

need not take on any particular form so long as it is in fact a claim. In determining whether or not a written claim was in fact served on the respondent the trial court will examine the various writings and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind.⁵

In this instance the claimant prepared a written incident report regarding her accident. She was given the report by her supervisor and after completion of the report she was sent to a medical facility for treatment. Claimant testified:

Q. Now, did you immediately report that you had fallen to someone at the employer?

A. Yes, I did. There were several employees that came to help me up and they went and got the nurse and the nursing supervisor.

Q. Okay. And did you complete a written incident report?

A. Yes, I did.

Q. And who was present at the time that you completed that report?

A. There were several employees that were standing around. The nursing supervisor is the one that gave it to me. She was there while I was filling it out.⁶

According to claimant's testimony, the written incident report she delivered would have been within the required time limit. Respondent argues the claimant did not meet her burden of proof because of the failure to produce the written document. But the absence of the written incident report, which ostensibly is in respondent's possession, does not convincingly contradict claimant's testimony. The claimant's uncontradicted testimony is that she filled out the incident report upon being provided the form by her supervisor.

³ *Fitzwater v. Boeing Airplane Co.*, 181 Kan. 158, 166, 309 P.2d 681 (1957).

⁴ *Ricker v. Yellow Transit Freight Lines, Inc.*, 191 Kan. 151, 379 P.2d 279 (1963).

⁵ *Ours v. Lackey*, 213 Kan. 72, 515 P.2d 1071 (1973).

⁶ P.H. Trans. at 5.

Uncontroverted evidence that is not improbable or unreasonable cannot be disregarded unless it is shown to be untrustworthy, and is ordinarily regarded as conclusive.⁷

The claimant's nursing supervisor gave her an incident report to fill out. The claimant was then sent by respondent to a medical facility to receive treatment. The written incident report obviously was prepared for the purpose of receiving workers compensation benefits and that by submitting it claimant completed the requirements necessary to obtain medical treatment benefits. In fact, claimant did receive medical treatment from respondent.

This Board Member concludes that the written incident report claimant filled out for her supervisor was intended to be and does satisfy the purposes of a written claim. Written claim was, therefore, timely.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁸ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁹

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Robert H. Foerschler dated August 8, 2007, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of October 2007.

BOARD MEMBER

c: Steffanie L. Stracke, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge

⁷ *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978)

⁸ K.S.A. 44-534a.

⁹ K.S.A. 2006 Supp. 44-555c(k).